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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/501,198

01/31/2005

Jonathon Charles Helmer

50162-00001

3568

25231 7590 01/28/2008  
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EXAMINER

LE, UYEN CHAUN

ART UNIT

PAPER NUMBER

2887

MAIL DATE

DELIVERY MODE

01/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/501,198

**Applicant(s)**

HELMER ET AL.

**Examiner**

Uyen-Chau N. Le

**Art Unit**

2887

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32,34,37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32,34,37 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Prelim. Amdt/Amendment*

1. Receipt is acknowledged of the Preliminary Amendment filed 10/31/2007. Claims 1-32, 34 and 37-38 are pending.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-25 and 34-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Goldsmith et al (US 6190610 B1 - cited by the Applicant).

Re claims 1-25 and 34-38: Goldsmith et al an identifier comprising at least two machine readable components wherein at least one of the components is configured for being changed

from an original value to a modified value in response to a stimulus (see abstract); wherein both the original value and the modified value are machine readable (i.e., the first barcode and the second barcode) (abstract); wherein at least some of the machine readable components comprise of elements having binary values; wherein the identifier includes one or more graphic symbols and/or characters (col. 6, lines 25-29); wherein one or more graphic symbols and/or characters are alpha-numeric characters; wherein the identifier includes a bar code or pictographic code; wherein the bar code is a 1-dimensional bar code or pictographic code (fig. 7); wherein the bar code is a 2-dimensional bar code or pictographic code; wherein the bar code is a 3-dimensional bar code or pictographic code; wherein the identifier includes at least one component configured for being read by a human which changes from an original form configured for being read by a human to a modified form configured for being read by a human in response to the stimulus (figs. 7A & 7B); wherein the stimulus is a change in temperature; wherein the stimulus is a change in pressure; wherein the stimulus is a change in electric current; wherein the stimulus is a change in electromagnetic field; wherein the stimulus is a change in light (level, accumulative, wavelength); wherein the stimulus is a change in Chemical composition; wherein the stimulus is exposure to certain gases or vapours; wherein the stimulus is exposure to certain liquids, emulsions or slurries (col. 4, lines 1-2); wherein the stimulus is exposure to certain solids; wherein the stimulus is a change in time or an indirect consequence of a change in time; wherein at least some of the components may be used to represent digits; wherein at least one of the digits is a check; wherein the check digit does not change in response to the stimulus and its value is incorrect after the identifier has responded to the stimulus; wherein the check digit does not change in response to the stimulus and its value is correct after the identifier has responded to the

stimulus; wherein the check digit changes in response to the stimulus such that its value is incorrect after the identifier has been exposed to the stimulus; wherein the check digit changes in response to the stimulus such that its value is correct after the identifier has responded to the stimulus (col. 3, line 37 through col. 6, line 67).

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldsmith et al in view of King et al (US 7098850 B2). The teachings of Goldsmith et al have been discussed above.

Re claims 26-31: Goldsmith et al has been discussed above but is silent with respect to the identifier includes a power source and an electrical circuit; wherein the power source includes at least one of a primary electric cell, a secondary electric cell, a photovoltaic device, a piezo-electric device or a capacitor; wherein the identifier including a power antenna and an electrical circuit; wherein at least part of the power source is formed by printing; wherein at least part of the power antenna is formed by printing; wherein the electrical circuit is placed such that it will tend to be disturbed if the package is opened or tampered with; respectively.

King et al teaches a transponder 10 disposed on a food container (200, 600) having an antenna formed by printing (figs. 1, 11B and 15A; col. 6, lines 1+ and col. 13, lines 30-55).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the teachings of King et al into the system as taught by Goldsmith et al with an advanced system for producing a more accurate and faster reading detecting due the RFID/transponder verse barcode. Furthermore, such modification would have been an obvious engineering variation, well within the ordinary skill in the art, for identify a product condition, and therefore an obvious expedient.

7. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldsmith et al in view of Zahn (DE4303035 - cited by the Applicant). The teachings of Zahn and Goldsmith et al have been discussed above.

Re claim 32: Goldsmith et al has been discussed above but is silent with respect to an identifier formed by applying a light coloured material over a dark coloured surface such that gaps in the light coloured material form a machine readable code .

Zahn discloses an identifier formed by applying a light coloured material over a dark coloured surface such that gaps in the light coloured material form a machine readable code (see English abstract).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the teachings of Zahn into the system as taught by Goldsmith et al for intended user (i.e., utilize Zahn system in a food processing/marketing system). Furthermore, such modification would such modification would have been an obvious engineering variation, well within the ordinary skill in the art, for detecting/determining food contamination, and therefore an obvious expedient.

#### ***Response to Arguments***

8. Applicant's arguments filed 10/31/2007 have been fully considered but they are not persuasive.

9. In response to the Applicant's argument with respect to "... Goldsmith et al. does not disclose an identifier with multiple individual components, at least one of which is configured for being changed from one machine readable value to another machine readable value..." (p. 6, 3rd paragraph), the Examiner respectfully disagrees and requests the Applicant to further review Goldsmith et al wherein the identifier having multiple components (fig. 9), at least one first and second barcode changed. Since the claim does not specifically recite/define what exactly the components are, the claimed limitation, given the broadest reasonable interpretation, Goldsmith et al meets the claimed invention (see the rejection above).

10. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the

teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the combination of King et al and Goldsmith et al would provide an advanced system for producing a more accurate and faster reading detecting due the RFID/transponder verse barcode. Furthermore, such modification would have been an obvious engineering variation, well within the ordinary skill in the art, for identify a product condition, and therefore an obvious expedient.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen-Chau N. Le whose telephone number is 571-272-2397. The examiner can normally be reached on maxi-flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven S. Paik can be reached on 571-272-2404. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Uyen-Chau N. Le  
Primary Examiner  
Art Unit 2887

January 22, 2008